

REMARKS

The present Amendment is filed in response to the Official Action mailed May 29, 2008 and is accompanied by a three-month extension petition to reset the deadline for responding to and including November 29, 2008. In view of the finality of the May 29, 2008 Official Action, the present Amendment is also filed in conjunction with a Request for Continued Examination. Based on the amendments and remarks made herein, reconsideration of the Examiner's rejections and Notice of Allowance of all pending claims is respectfully requested.

At the time of the Official Action, claims 1-31 and 39-42 were pending in the present application. Of such claims, claims 1, 19, 25-26, 29, and 31 were independent claims. The remainder of the claims depended from the independent claim immediately preceding. Each of these claims stands rejected.

Prior to addressing the rejections, Applicant wishes to extend his appreciation toward Examiner James Swiger for the courtesies extended during the October 15, 2008 telephonic interview. During the interview, the Examiner and the undersigned discussed the presently pending claims, and most specifically claims 1, 25-26, and 31, as well as the prior art references of Studer et al. (U.S. Patent 6,146,383) and Young (U.S. Patent 6,626,906). During the interview the undersigned and the Examiner discussed the spherical head 9, 10, of pedicle screw 1 of Studer. In this regard, the undersigned expressed his opinion that the spherical head 9, 10 of Studer would not provide the compressive forces claimed in certain of the present claims, notably at least claims 25-26 and 31. Studer described the pedicle screw 1 with spherical head 9, 10 as follows:

"Since the pedicle screws 1 are equipped with a spherical head part 2 which can be screwed together with the pedicle screw 1 as a separate part 9, there are many more freedoms in the shaping of the individual pedicle screws without it being necessary to do

without a pivotability about a spherical head." Col. 3, Line 65 - Col. 4, Line 3.

It is clear from this description that the spherical head 9, 10 of Studer is attached to the pedicle screw by a screwing force and not a compressive force.

On the other hand, and as at least claimed in claim 25, for example, the ball ring of the present invention exerts a compressive force on the head of the fixation element to secure the head of the screw within the coupling element at any point along the length of the pedicle screw. It is not believed that such limitation is met by the Studer reference.

With this in mind, the Examiner suggested to define the ball ring of the present invention as either a compressive ball ring or a split ring in each of the claims, in manner similar to claim 25. Applicant has undertaken to amend the claims in such a manner, and believe that the current claims define over the Studer reference.

In addition to amending certain claims, Applicant has added claims 43-47 as new claims. As such, claims 1-31 and 39-47 are presently pending.

For completeness, Applicant notes that the Examiner had rejected claims 1-5, 7-18, 19-31, and 39-42 under 35 U.S.C. § 103(a) as being unpatentable over Studer in view of Young. The Examiner had also rejected claims 6 under 35 U.S.C. §103(a) as being unpatentable over Studer and Young in further view of Gu (U.S. 6,280,443). Given the present claim amendments, it is believed that each of these objections is overcome.

Specifically, as discussed above, the Studer reference fails to teach a compressive ball ring or associated function as provided for in each of the presently pending independent claims. For at least this reason, it is firmly believed that each of the independent claims, as well as those claims that depend therefrom, are allowable.

Should the Examiner not agree with this conclusion, Applicant notes that certain of the dependent claims further provide that the ball ring be at least partially split, for example as provided in new claims 43-47. Such claim amendments were discussed with the Examiner during the telephonic interview, and it is believed that at least these claims are clearly patentable over the art of reference. For this further reason, such claims are believed to be in an allowable condition.

Finally, Applicant notes that claim 1 has been amended to remove the term "linear," which is considered to be an unnecessary limitation in view of the art cited.

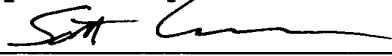
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 11, 2008

Respectfully submitted,

By 

Scott E. Charney
Registration No.: 51,548
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant